



POLICE DEPARTMENT

June 5, 2023

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In the Matter of the Charges and Specifications	:	
- against -	:	
Police Officer Ariel Duran	:	
Tax Registry No. 948331	:	Case No. 2022-26418
5 Precinct	:	
Police Officer Eric Chan	:	
Tax Registry No. 948193	:	Case No. 2022-26419
5 Precinct	:	
Police Officer Manko Cheung	:	
Tax Registry No. 950197	:	Case No. 2022-26420
5 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondents: John Tynan, Esq.
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New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-26418

1. Police Officer Ariel Duran, on or about January 14, 2022, while assigned to the 5 Precinct, failed to investigate an individual known to the Department for driving under the influence, and otherwise failed to follow Department procedures for investigating intoxicated or impaired drivers.

P.G. 208-40

INTOXICATED OR IMPAIRED
DRIVER ARREST

A.G. 304-06

PROHIBITED CONDUCT

2. Police Officer Ariel Duran, on or about January 14, 2022, while assigned to the 5 Precinct, failed to activate his Body-Worn Camera during police action that required mandatory activation.

P.G. 212-123

USE OF BODY-WORN CAMERAS

3. Police Officer Ariel Duran, on or about January 14, 2022, while assigned to the 5 Precinct, failed to make required Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1
A.G. 304-05, Page 1, Paragraph 4ACTIVITY LOGS
PERFORMANCE ON DUTYDisciplinary Case No. 2022-26419

1. Police Officer Eric Chan, on or about January 14, 2022, while assigned to the 5 Precinct, failed to investigate an individual known to the Department for driving under the influence, and otherwise failed to follow Department procedures for investigating intoxicated or impaired drivers.

P.G. 208-40

INTOXICATED OR IMPAIRED
DRIVER ARREST

A.G. 304-06

PROHIBITED CONDUCT

2. Police Officer Eric Chan, on or about January 14, 2022, while assigned to the 5 Precinct, failed to activate his Body-Worn Camera during police action that required mandatory activation.

P.G. 212-123

USE OF BODY-WORN CAMERAS

3. Police Officer Eric Chan, on or about January 14, 2022, while assigned to the 5 Precinct, failed to make required Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1
A.G. 304-05, Page 1, Paragraph 4ACTIVITY LOGS
PERFORMANCE ON DUTY

Disciplinary Case No. 2022-26420

1. Police Officer Manko Cheung, on or about January 14, 2022, while assigned to the 5 Precinct, failed to investigate an individual known to the Department for driving under the influence, and otherwise failed to follow Department procedures for investigating intoxicated or impaired drivers.

P.G. 208-40

INTOXICATED OR IMPAIRED
DRIVER ARREST
PROHIBITED CONDUCT

A.G. 304-06

2. Police Officer Manko Cheung, on or about January 14, 2022, while assigned to the 5 Precinct, failed to activate his Body-Worn Camera during police action that required mandatory activation.

P.G. 212-123

USE OF BODY-WORN CAMERAS

3. Police Officer Manko Cheung, on or about January 14, 2022, while assigned to the 5 Precinct, failed to make required Activity Log entries.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS

A.G. 304-05, Page 1, Paragraph 4

PERFORMANCE ON DUTY

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on May 2, 2023. Respondents, through their counsel, entered pleas of Guilty to the charged misconduct, and testified in mitigation of the penalties. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I recommend that Respondents Duran and Chan each forfeit a total of twenty (20) vacation days, and that Respondent Cheung forfeit a total of ten (10) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

On the evening of January 14, 2022, a motorist driving on the entrance ramp to the Brooklyn Bridge crashed her vehicle into a guardrail. From video footage that captures the

accident, it can be seen that no other vehicle struck the motorist's car. (Dept. Ex. 1 at 2:59) The motorist, who at the time was employed with the Governor's office, was taken by ambulance to the hospital where she was treated and released. She was never tested to determine whether she was intoxicated at the time of the crash, and was not arrested.

An off-duty EMT came upon the accident and called 911. A recording of a phone interview with the EMT, conducted by IAB on March 17, 2022, was introduced into evidence along with the accompanying transcript (Dept. Exs. 5 & 5A). In that interview, the EMT stated that he checked on the motorist, who he described as clearly intoxicated; he said he "could smell the alcohol leaking from her pores from a mile away." He called 911 to report his observations, which appear in the ICAD (Dept. Ex. 2). When EMS arrived on the scene, he shared his information with them as well. At some point, the motorist handed the off-duty EMT her phone, and an individual who identified himself as a police officer said he was appreciative that the EMT had stopped to help the motorist. (Dept. Ex. 5A at 3-5)

Detective Robert Stallone, an acquaintance of the motorist, was interviewed by the Department on April 5, 2022. A recording of that interview, and the accompanying transcript, were admitted into evidence (Dept. Exs. 6 & 6A). Stallone stated that the motorist had called him from the scene to tell him she was involved in an accident. She was hysterical as she described how she was cut off, lost control of her vehicle, and crashed into a guardrail. He confirmed that the motorist had handed her phone to another individual with whom Stallone spoke; Stallone asked if she was okay, and the individual stated that he smelled alcohol. Stallone later spoke with an on-duty EMS worker who had arrived; the EMS worker told Stallone that the motorist would be going to the hospital. Stallone also spoke with Respondent Chan, who repeated that the motorist would be transported to the hospital. Stallone asked Chan to text him

with the number of the accident report. Stallone insisted that he never attempted to influence Chan, or anyone else, not to charge the motorist with DWI. In a conversation with members of the Governor's staff on a later date, Stallone learned that the motorist had been out drinking with colleagues before the accident. (Dept. Ex. 6A at 8-16)

Respondent Cheung and his partner were the first police officers to arrive at the scene, followed by Respondents Duran and Chan, who were assigned to the incident. Cheung testified that he observed just the one vehicle, which was empty, then walked to the ambulance. An EMS worker informed him that there was only the one motorist involved, and that she had back pain but was not in critical condition or likely to die. From outside the ambulance, Cheung spoke with the motorist, who was inside on a stretcher. Cheung asked her what happened, and she stated that she did not remember. He did not ask her where she had been coming from before the accident. Cheung took a photograph of her driver's license, but did not request her insurance or registration. From where he was standing, approximately 10 feet from the motorist, Cheung did not smell any alcohol. On the witness stand, Cheung acknowledged that he should have entered the ambulance to observe the motorist more closely, and "grilled" her on the details of what occurred to see if her claim that she did not remember was merely her "bullshitting him." (Tr. 82-85, 90-94, 96, 99, 101-02)

While still at the scene, Cheung learned from the motorist that she worked for the Governor's office, and he observed a placard in the motorist's vehicle from the office of the Governor of New York. He did not contact his supervisor, and insisted that this information did not influence his handling of the matter. Cheung testified that when Duran and Chan arrived, he shared his information with the officers, including the photograph of the motorist's license, and departed from the location to resume patrol. At no point during the incident did he activate his

Body-Worn Camera (“BWC”), since at the time he did not believe he needed to do so. Cheung conceded that his activity log entries for this matter were incomplete. (Tr. 85-87, 95-101)

Respondent Chan testified that when he arrived at the scene, he conferred with Cheung and the EMS worker, then went inside the ambulance to speak with the motorist, who was crying and upset. She stated that she had been hit by another car, which caused her to strike the rail; the motorist could not provide a description of the other vehicle. According to Chan, the motorist’s speech was slurred, and she had difficulty focusing, raising the possibility that she was intoxicated. Nevertheless, Chan did not ask the motorist any follow-up questions, such as where she was coming from. The motorist’s phone was handed to Chan, and he spoke with Detective Stallone who asked how the motorist was doing. Chan agreed that he would text the number of the Police Accident Report to Stallone when it became available. (Tr. 21-25, 32-34, 36, 45-46)

After speaking with the motorist, Chan returned to his police vehicle to prepare the paperwork for the incident, including a complaint report stating that the motorist’s car was struck by an unknown vehicle which left the scene (Dept. Ex. 4). He informed his partner Duran of his observations, including the motorist’s slurred speech and lack of focus. Chan testified that he did not do any further investigation into whether the motorist was intoxicated. At some point while still at the scene, Chan learned that the motorist worked for the Governor, which played a part in the decision not to follow-up on the possibility that the motorist was driving while intoxicated. Chan testified that in hindsight, he realizes that he should have administered a breath test to the motorist, and contacted his supervisor, and he will take the appropriate steps in future cases. He also acknowledged that he did not activate his BWC during the incident, since he was treating the incident as a regular collision, and his activity log entries were incomplete. (Tr. 25-28, 35-44, 46-49)

Respondent Duran testified that when he arrived he gathered information about the motorist from Cheung, then spoke with the EMS worker, who stated that the motorist was upset, but fine physically. Duran did not go into the ambulance or speak with the motorist directly; instead, he returned to his RMP and completed the Police Accident Report (Dept. Ex. 3), based on the information provided to him by Cheung and Chan. Although Chan stated to him that the motorist might be intoxicated, Duran did not take any further steps to investigate, nor did he notify a supervisor. He conceded that the decision not to pursue whether the motorist was driving while intoxicated was, in part, influenced by the knowledge that she was employed by the Governor's office, though it was not completely because of that. Duran admitted at trial that he could have done more to investigate. He also acknowledged that he wrongfully failed to activate his BWC, and that his activity log entries were incomplete. (Tr. 54-61, 63-64, 70-73, 75-76)

PENALTY

In order to determine appropriate penalties, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondents' employment histories also were examined. *See* 38 RCNY § 15-07. Information from their personnel records that was considered in making these penalty recommendations are contained in attached memoranda.

Respondents Duran and Chan, who were appointed to the Department on July 14, 2009, and Respondent Cheung, who was appointed to the Department on July 6, 2011, each pleaded guilty to identical charges, including for failing to investigate whether a motorist involved in an

accident had been driving while intoxicated. The Department Advocate recommends that each Respondent forfeit a total of 30 vacation days, and be placed on one-year dismissal probation. Counsel for Respondents asks for a lesser penalty of 15 vacation days.

With respect to Respondents Duran and Chan, who were assigned to handle this matter, it is troubling that their decision-making process was negatively impacted when they learned that the motorist was employed with the Governor's office. Although there was no evidence that they were pressured into handling the matter in a certain way by Detective Stallone or anyone else, Duran and Chan each acknowledged that the motorist's connection to the Governor's office did play a part in how they investigated this incident. The motorist was involved in what appeared to be a one-vehicle accident, and she exhibited some signs of intoxication, including slurred speech and a lack of focus. She was unable to describe the other vehicle that supposedly struck her car. Nevertheless, the officers did not press her on the details of how the accident occurred, question her about where she was coming from, or administer any type of breath test. They did not notify a supervisor, nor did they activate their BWCs, which might have provided evidence of the motorist's condition. Instead, they simply accepted the motorist's explanation that she was side-swiped by another vehicle which fled the scene.

To their credit, though, both Duran and Chan were forthright at trial in conceding that they were deficient in their handling of this investigation. They each candidly admitted that their investigation was lacking, and they should have done more to determine whether the motorist was intoxicated. On the witness stand, they each came across as contrite about how this investigation was handled, and readily acknowledged the need to do better going forward.

On balance, the presumptive penalties for the offenses committed by Duran and Chan will fairly and adequately address the totality of their misconduct in this case. On the one hand,

it is unacceptable that they allowed their investigation to be unduly influenced by the motorist's employment with the Governor's office, and so a mitigated penalty would not be appropriate. I am not, however, persuaded that there is a need for an aggravated penalty that involves a period of monitoring for these officers, each of whom has received consistently strong performance evaluations, and neither of whom has any formal disciplinary history. There was no indication in the record that Respondents, themselves, gained any benefit from not taking enforcement action against the motorist. As such, I recommend that Duran and Chan each forfeit twenty (20) vacation days for their failure to take police action, three (3) days for negligently failing to activate their BWCs, and one (1) day for their incomplete activity log entries, with those penalties to run concurrently with each other, bringing their total penalties to twenty (20) vacation days each, a significant loss that will hopefully deter them from future misconduct, and underscore the importance of impartial policing.

With respect to Respondent Cheung, who also has no disciplinary record, he was similarly forthright at trial in conceding that he should have done a more thorough investigation of the motorist. Specifically, he readily acknowledged that he should have entered the ambulance to observe the motorist more closely, and pressed her on her initial claim that she did not remember what had transpired.

As with Duran and Chan, I recommend that Cheung forfeit three (3) vacation days for negligently failing to activate his BWC, and one (1) day for incomplete activity log entries. However, for his failure to take police action, a mitigated penalty is warranted. Whereas Duran and Chan were the assigned officers, responsible for preparing the paperwork and making the decisions on how the matter was handled, Cheung, as the first officer to arrive, was focused on gathering preliminary information. He determined there were no major injuries, took a

photograph of the motorist's driver's license, then shared his information with the assigned officers and resumed patrol. In contrast to Duran and Chan, there was no indication that Cheung observed any signs of intoxication in the motorist, and no credible evidence that his actions were in any way motivated by his knowledge that the motorist worked for the Governor's office. As such, I recommend a mitigated penalty of ten (10) vacation days for his failure to investigate, to run concurrently with the other two charges, bringing Cheung's total penalty to ten (10) vacation days.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

DEC 07 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ARIEL DURAN
TAX REGISTRY NO. 948331
DISCIPLINARY CASE NO. 2022-26418

Respondent was appointed to the Department on July 14, 2009. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2020, 2021, and 2022.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ERIC CHAN
TAX REGISTRY NO. 948193
DISCIPLINARY CASE NO. 2022-26419

Respondent was appointed to the Department on July 14, 2009. On his three most recent annual performance evaluations, he was rated “Exceed Expectations” for 2020, 2021, and 2022. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MANKO CHEUNG
TAX REGISTRY NO. 950197
DISCIPLINARY CASE NO. 2022-26420

Respondent was appointed to the Department on July 6, 2011. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2020 and 2021, and “Exceeds Expectations” for 2022. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials